IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4763 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 08, 2007.

Heard Shri Gulhane, learned counsel for the petitioner and Shri Shende, learned counsel for respondent No.2.

The Executing Court has permitted original plaintiff – decree holder to amend and add prayer for delivery of possession of suit property. Shri Gulhane, learned counsel by placing reliance upon the judgment of the Hon'ble Apex Court in the case of Adcon Electronics vs. Daulat, reported at 2001 (4) Mh.L.J. 469, particularly para 13 contends that such an amendment could not have been allowed. Perusal of para 13 and said judgment reveals that the Hon'ble Apex Court has considered facts in which there was no prayer for handing over of possession. Section 22(2) of Specific Relief Act specifically prohibits grant of reliefs mentioned in Clauses (a) and

(b) of Section 22(1), if those prayers are not made in the plaint. The controversy has been considered by the Hon'ble Apex Court in the case of Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors., reported at AIR 1982 SC 818, where the Allahabad High Court had permitted amendment, to add the prayer for possession in execution and the Hon'ble Apex Court has concluded that Section 22(2) of Specific Relief Act obliges the Civil Court to allow such prayer for possession, if it is made. This judgment is also followed by the learned Single Judge of this Court in the case of Lal Chand vs. Ramkrishna, reported at 2003 (4) Mh.L.J. 119, wherein the learned Single Judge has observed that after such prayer for amendment is made, Civil Court has no discretion but to allow the amendment.

In these circumstances, I find that no case is made out for interference. Writ Petition is dismissed. No order as to costs.

JUDGE

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